



DAKOTA, MINNESOTA & EASTERN RAILROAD CORPORATION



Cedar American
Rail Holdings, Inc.



IOWA, CHICAGO & EASTERN RAILROAD CORPORATION

Kevin V. Schieffer

President & Chief Executive Officer

6 June 2005

Case Control Unit
Finance Docket No. 33407
ATTN: Victoria Rutson
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001



Dear Ms. Rutson:

In accordance with the *Public Review and Comment* provisions outlined with the release of the Draft Supplemental Environmental Impact Statement, Finance Docket No. 33407, (Draft SEIS) prepared by the Surface Transportation Board's (Board) Section of Environmental Analysis (SEA), this letter conveys the comments of the Dakota, Minnesota and Eastern Railroad (DM&E).

The Draft SEIS exhaustively assesses the four issues remanded to the Board by the 8th Circuit Court of Appeals. We believe the SEA went well above and beyond the court's limited remand requirements, and has produced an extensive analysis that results in the inevitable and correct conclusions. The 8th Circuit was clear in its assessment of the Board's Final EIS when it stated in its October 2, 2003 ruling:

"Although we find it necessary to vacate the Board's final decision so that it may correct certain deficiencies, we think that on the whole the Board did a highly commendable and professional job in evaluating an enormously complex proposal. We are confident that on remand the Board will quickly address those few matters that we have identified as requiring a second look, and will come to a well informed and reasonable conclusion."

In the case of horn noise mitigation the Court noted that:

"This is not to say that the Board must ultimately mitigate for horn noise, but it must at least explain why mitigation is unwarranted."

In reference to the noise and vibration issue which was remanded, the Court wrote:

"Although the agency is not required to include in its final analysis every factor raised by ...a comment' and may respond, for example, by explaining why the comment does not warrant [further] agency response..."

With meticulous thoroughness the Draft SEIS addresses each of the issues questioned by the court. The noise and vibrations issues were addressed in-depth and the outcome is reasonably set forth in the Draft SEIS. We have nothing to add or suggest in that regard.

With regard to the effects of increased coal consumption, the Court cited 40 C.F.R 1502.22 writing:

“Then, ‘[i]f the information relevant to reasonably foreseeable significant adverse impacts cannot be obtained because the overall costs of obtaining it are exorbitant or the means to obtain it are not known,’ the agency must include in the environmental impact statement:

(1) A statement that such information is incomplete or unavailable; (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment; (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment, and (4) the agency’s evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.”

We believe that the air quality modeling was an extreme exercise of marginal value, such that the court decision did not require. However, given the likely event that opponents will challenge every assumption that went into the model, we would encourage the Board to reconsider whether the modeling was necessary at all. This goes to the completeness, availability and reasonable foreseeability issues raised in the initial court decision.

However, since the modeling was completed, we note certain market and price assumptions used in the modeling that relate to rail market and rates, primarily referenced in chapter 4. With respect to market assumptions, the Draft SEIS correctly notes the wide variety of general markets reviewed, and some of the relative advantages and disadvantages of each. It also discusses rates at some length. It is impossible, at this time, to determine or realistically predict exact prices or know with certainty which markets will be served by DM&E, as the original STB Order correctly noted. However, the market and rate input assumptions used by SEA in the Draft SEIS appear reasonable.

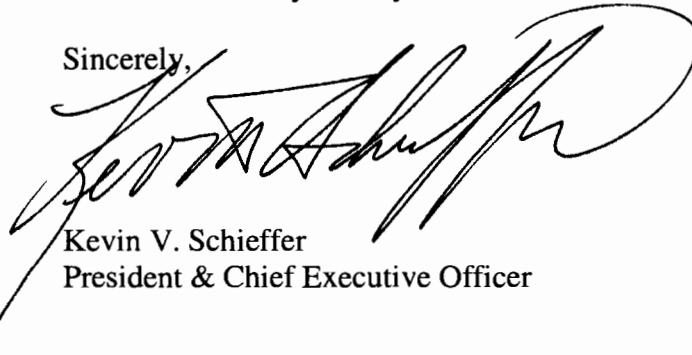
We urge the Board to resist inevitable demands to restudy the restudied. These issues have been considered and reconsidered over the past 7 ½ years, and again most exhaustively in the past 18 months, resulting in what we believe are well-founded conclusions -- again. The initial EIS and STB Order already have imposed unprecedented conditions that add extraordinary costs to this project, with more issues reviewed and higher mitigation requirements than those ever imposed on Class I railroads

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whose densest corridors serving a *national market* today *already* experience train traffic volumes five time greater than we hope to generate in our densest corridor *ten years from now* to serve the *regional market* defined in this proceeding.

The time has come and long since passed – since our original filing in February 1998 – to bring this case to closure. We respectfully urge prompt issuance of the Final SEIS and final STB Order bringing this matter to closure. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kevin V. Schieffer', with a large, sweeping loop at the end.

Kevin V. Schieffer
President & Chief Executive Officer

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